IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
C. R. A. No.404 of 1997.

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Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Register's orders.	Court's or Judge's Orders

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Shri NS Badhe Advocate for the applicant.
Shri Abhijeet A. Sambre H/F Shri GY Gharote Advocate for respondent no.1.
Shri A. S. Mehadia Advocate for Lrs of Respondent No.4 & 5.

CORAM : A.H. JOSHI, J.
DATED : 04 /12/2006.

1. In the midst of hearing, it has transpired that the order impugned is passed below application which is filed by the applicant herein under rule 13 of Order 9 of Civil Procedure Code.

2. Learned Advocate for the applicant is not in a position to dispute that this order is appellable under clause (d) of Rule 1 of Order 43 of Civil Procedure Code.

3. Learned Advocate Mr. Badhe for the applicant states that the revision application was filed on the bonafide belief that while the Order under rule 13 of Order 9 is appellable, however, since the Trial Court held that the application under said rule was not maintainable, C. R. A. was filed. Learned Advocate Mr. Badhe seeks permission to convert the present revision application into appeal and transfer thereof to the District Court Nagpur, for hearing and disposal according to law by keeping all pleas and contentions urged by the applicant herein open for hearing and disposal. This Court finds that this request is reasonable.

4. Learned Advocate Mr. Gharote appearing for respondent no.1 Original plaintiff brings it to the notice of the Court that interim stay of execution of decree in Special Civil Suit NO.198 of 1979 should be modified and restricted to the extent of present applicants who are the original defendants 8 & 9 only, and the plaintiff should be free to execute the decree

against other defendants. This request is most reasonable and is liable to be accepted.

5. In the result, this Court passes the following Order:-

[i] Revision Application No.404 of 1997 is allowed to be converted into appeal under Order 43 rule 1(d) of Civil Procedure Code.

[ii] Papers be transferred for hearing and disposal according to law to the District Court, Nagpur.

[iii] The parties who are represented through Advocates i. e. original plaintiff and legal heirs of respondent no.5, shall appear before the District Court on 8-1-2007 on which date the appeal may be allotted to any of the Courts when it may be fixed for appearance of respondents who are not appearing in this case before this Court for fresh notice, or may be proceeded as be directed by Court concerned.

[iv] Interim order passed by this Court as to stay of

decree on 30/7/97 shall operate till disposal of appeal is however restricted to the appellants only, and decree holder is free to execute the decree against the judgment debtor who have not preferred appeal in relation to whom decree has become final.

JUDGE

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